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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,134	12/27/2000	Gilbert Neiger	042392.P9770	8719

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT PAPER NUMBER

2137

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,134

Applicant(s)

NEIGER ET AL.

Examiner

Kevin Schubert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9,31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 9 and 31 have been fully and carefully considered, but Examiner believes the Robinson reference has still not been overcome. A Response to Arguments section concludes this action.

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Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's

10 submission filed on 7/31/06 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 9 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson, U.S. Patent No. 5,522,075.

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As per claim 9, the Applicant describes a method comprising the following limitations which are met by Robinson:

a) running guest software in a processor mode that enables the guest software to operate at a privilege level intended by the guest software (Col 14, lines 12-15);

b) identifying an attempt of the guest software to perform an operation restricted by said processor mode (Col 12, lines 50-53);

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c) determining that the attempt of the guest software would fail if the guest software was running outside said processor mode (Col 12, lines 20-60);

d) allowing the guest software to attempt the operation (Col 12, lines 20-60).

5 As per claim 31, the Applicant describes the method of claim 9, which is met by Robinson, with the following limitation which is also met by Robinson:

Wherein determining that the attempt of the guest software would fail includes determining that the guest software is running with insufficient privilege to perform the operation (Col 12, lines 20-60).

10 ***Response to Arguments***

Applicant argues that the 102(b) rejection of claim 9 under Robinson has been overcome by the instant amendment. More specifically, Applicant presents the following argument:

1) Robinson does not teach part c

2) Robinson does not teach part d

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Examiner respectfully disagrees. Robinson discloses a method of running guest software in a processor mode that enables the guest software to operate at a privilege level intended by the guest software (part a) (Col 14, lines 12-15). Robinson also discloses that the method includes monitoring for "sensitive instructions" which are instructions that, if allowed to execute, would affect all other VMs and the VMM (Col 8, line 65 to Col 9, line 14). Since these "sensitive instructions" would succeed in performing a restricted operation if executed, Robinson teaches that the method includes monitoring for these "sensitive instructions" in an effort to identify an attempt of the guest software to perform an operation restricted by the processor mode (part b). It is determined that if the guest software were running outside the current processor mode and in a different mode (e.g. VMM), the guest software would fail to perform the restricted operation and have a negative affect (part c). Accordingly, the VM may trap to the VMM where emulation of the attempts may occur and damage to the system is precluded (part d) (Col 12, lines 58-60).

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Thus, as described, Robinson appears to teach each and every limitation of claim 9. Accordingly, the rejection is maintained.

Conclusion

5 This action is made non-final. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Schubert whose telephone number is (571) 272-4239. The examiner can normally be reached on M-F 7:30-6:00.

10 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER